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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2014-0088]

RIN 0579-AE05

Mexican Hass Avocado Import Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: Commercial consignments of Hass avocado fruit are currently authorized entry into the continental United States, Hawaii, and Puerto Rico from the Mexican State of Michoacán under a systems approach to mitigate against quarantine pests of concern. We are amending the regulations to allow the importation of fresh Hass avocado fruit into the continental United States, Hawaii, and Puerto Rico from all of Mexico, provided individual Mexican States meet the requirements set out in the regulations and the operational workplan. Initially, this action would only apply to the Mexican State of Jalisco. With the exception of a clarification of the language concerning when sealed, insect-proof containers would be required to be used in shipping and the removal of mandatory fruit cutting at land and maritime borders, the current systems approach will not change. The current systems approach, which includes requirements for orchard certification, traceback labeling, pre-harvest orchard surveys, orchard sanitation, post-harvest safeguards, fruit cutting and inspection at the packinghouse, port-of-arrival inspection, and clearance activities, will be required for importation of fresh Hass

avocado fruit from all approved areas of Mexico. The fruit will also be required to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of Mexico with an additional declaration stating that the consignment was produced in accordance with the systems approach described in the operational workplan. This final rule will allow for the importation of fresh Hass avocado fruit from Mexico while continuing to provide protection against the introduction of plant pests into the continental United States, Hawaii, and Puerto Rico.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

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SUPPLEMENTARY INFORMATION:

Background

Under the regulations in “Subpart-Fruits and Vegetables” (7 CFR 319.56 through 319.56-75), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States. The current requirements for allowing importation of fresh Hass avocado fruit into the United States from Michoacán, Mexico, are described in § 319.56-30. No other Mexican States are currently allowed to export fresh Hass avocado fruit into the United States. Those current requirements include pest surveys and pest risk-reducing practices, treatment, packinghouse procedures, inspection, and shipping procedures.

On February 18, 2015, we published in the Federal Register (80 FR 8561-8564, Docket No. APHIS-2014-0088) a proposed rule¹ to amend the regulations to allow fresh Hass avocado fruit to be imported from all of Mexico into the continental United States, Hawaii, and Puerto Rico. Any Mexican State wishing to export fresh Hass avocado fruit to the continental United States, Hawaii, and Puerto Rico will be required to meet the requirements set out in the regulations for eligibility to ship fresh Hass avocado fruit into the continental United States, Hawaii, and Puerto Rico. Specifically, these requirements are found in § 319.56-30(c) and include orchard certification, traceback labeling, pre-harvest orchard surveys, orchard sanitation, post-harvest safeguards, and fruit cutting and inspection at the packinghouse. Prior to shipments beginning from any Mexican States other than Michoacán, APHIS will work with the national plant protection organization (NPPO) of Mexico to ensure that any other Mexican States that intend to export meet the requirements of § 319.56-30(c).

Any changes to the review process for approving new Mexican States will be added to the operational workplan as mutually negotiated and agreed on between APHIS and the NPPO of Mexico. An operational workplan is an agreement between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities, that specifies in detail the phytosanitary measures that will comply with our regulations governing the import or export of a specific commodity. Operational workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Operational workplans also

¹ To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0088>.

establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues.

In addition to the modifications to the current systems approach set out in the proposed rule, based on comments and our analysis, we are also changing the actions to be taken related to orchard pest detection requirements set forth in § 319.56-30(e). Under the current systems approach, an orchard affected by a pest detection loses its export certification and avocado exports from that orchard are suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken by the affected orchard have been effective. We have found this remedial action to be overly stringent. In accordance with the commodity import evaluation document (CIED), we are revising paragraph (e) to state that loss of export certification and export suspension may occur. This change from the prior automatic, definitive loss of export certification and export suspension, will allow APHIS the flexibility to determine the scope and nature of the pest detection in order to determine the best and most appropriate level of phytosanitary response required. Quarantine pests and their overall pest risk (as rated in the pest risk analysis (PRA)) will be listed in the operational workplan, along with the consequences of interception at the packinghouse, certified orchard, municipality, and port of entry.

We solicited comments concerning our proposal for 60 days ending April 20, 2015. We received 34 comments by that date. They were from producers, trade associations, representatives of State and foreign governments, and individuals. Of those, 12 comments were supportive of APHIS' proposal and the remaining 22 were either supportive with additional points or opposed. The comments are discussed below by topic.

General Comments

One commenter inquired how the proposed action would apply to the State of Alaska.

Currently, continental United States is defined in § 319.56-2 of the regulations as “The 48 contiguous States, Alaska, and the District of Columbia.” The provisions of this rule therefore apply to Alaska.

Another commenter said that harmful pesticides could harm both fresh Hass avocado fruit and avocado consumers.

While the commenter did not provide any specific examples of pesticides of concern, any pesticide harmful to the fresh Hass avocado fruit itself would most likely produce effects visible to inspection either in Mexico or at the port of first arrival into the United States. As for the human health implications of pesticide usage, the U.S. Food and Drug Administration (FDA) samples and tests imported fruits and vegetables for pesticide residues. Yearly monitoring reports and information on the program may be found here:

<http://www.fda.gov/Food/FoodborneIllnessContaminants/Pesticides/UCM2006797.htm>.

Two commenters stated that APHIS should consider the effect that the importation of fresh Hass avocado fruit from distant regions of Mexico has on global climate change. The commenters said that both the carbon emissions generated by long-distance shipment as well as the precedent via the purchase availability of non-local produce should be assessed as part of the importation approval process.

Another commenter said that the importation of fresh Hass avocado fruit from other regions in Mexico will affect the prices of avocados in the United States and, resultantly, affect consumer behavior. The commenter argued that the purchase price for fresh Hass avocados does not reflect the impact that the long distance shipping has on global climate change, and that an increased supply of fresh Hass avocado fruit from Mexico would lower the purchase price even further, allowing consumers to purchase greater quantities and thereby exacerbating the problem.

APHIS' proposed action is the expansion of the importation program for fresh Hass avocado fruit from Mexico into the United States. The Country of Origin Labeling (COOL) law, which is administered by the U.S. Department of Agriculture's (USDA) Agricultural Marketing Service, requires retailers, such as full-time grocery stores, supermarkets, and club warehouse stores, to notify their customers with information regarding the source of certain food, including fruits and vegetables. Any fresh Hass avocado fruit imported from Mexico would be subject to such requirements, thus allowing consumers to make any origin-based purchasing choices they may wish.

Another commenter observed that the proposed rule considers imported goods as foreign commerce until they reach the final consumer, thus preempting State and local laws.

APHIS regulations in this part preempt those State and local laws that are inconsistent with the regulations, namely, while the fruit is in foreign commerce.

Comments on Alternatives to the Proposed Action

One commenter stated that approval for the importation of fresh Hass avocado fruit should be made on a State-by-State basis. The commenter argued that this approach would allow local authorities to gain familiarity with the required phytosanitary measures and allow APHIS to thoroughly assess prospective exporters. The commenter concluded that such an approach would also allow domestic avocado producers to adjust to the increased supply.

As stated in the proposed rule, we believe that Jalisco will be the first new Mexican State to meet the requirements set forth in this rule and therefore the first Mexican State apart from Michoacán to be authorized to export fresh Hass avocado fruit to the continental United States, Hawaii, and Puerto Rico. Subsequent Mexican States would not necessarily be approved one at a time, but rather as each demonstrates its ability to meet the standards set out in the regulations.

We are confident that we have the review and oversight capacity to approve requesting Mexican States on a simultaneous basis as needed.

Currently, fresh Hass avocado fruit are required to be biometrically sampled and cut in the field, at the packinghouse, and by an inspector at the port of first arrival into the United States. We proposed to allow fruit to be cut at the discretion of the inspector. One commenter suggested that cutting the avocados would help monitor for illegal importation of narcotics and other illegal substances.

Given the lack of quarantine pest interceptions in shipments of avocado fruit from Mexico at the ports of first arrival for the period from 1997 to 2014, we are amending the requirement in order to allow for operational flexibility. Inspections for narcotics in imported materials are also performed by U.S. Customs and Border Protection (CBP) inspectors.

Comments on the Pest List

Specific pests of concern associated with fresh Hass avocado fruit for which mitigations are required are listed in paragraphs (c)(1)(ii), (c)(2)(i), and (e) of § 319.56–30. They are:

- Conotrachelus aguacatae, a small avocado seed weevil;
- Conotrachelus perseae, a small avocado seed weevil;
- Copturus aguacatae, avocado stem weevil;
- Heilipus lauri, large avocado seed weevil; and
- Stenoma catenifer, avocado seed moth.

We proposed removing these specific pests from the regulations. The pest list would instead be maintained in the operational workplan provided to APHIS for approval by the NPPO of Mexico.

Additionally, based on the findings of the PRA, we proposed to add eight pests to the list of pests of concern to be maintained in the operational workplan. Those pests were:

- Avocado sunblotch viroid;
- Cryptaspasma perseana, a tortricid moth;
- Conotrachelus serpentinus, a weevil;
- Maconellicoccus hirsutus (Green), pink hibiscus mealybug;
- Pseudophilothrips perseae (Watson), a thrips;
- Scirtothrips aceri (Moulton), a thrips;
- Scirtothrips perseae Nakahara, a thrips; and
- Sphaceloma perseae Jenkins, avocado scab.

Three commenters stated that these newly listed pests were not previously considered likely to follow the pathway of fresh Hass avocado fruit from Mexico. The commenters observed that the pests have never been intercepted or considered as pests of concern for which mitigations are required. The commenters observed that, as a signatory to the World Trade Organization's Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), the United States has agreed that any prohibitions it places on the importation of fruits and vegetables will be based on scientific evidence related to phytosanitary measures and issues, and will not be maintained without sufficient scientific evidence and concluded that the addition of the eight pests is contrary to this agreement. The commenters said that these pests had not been previously designated as quarantine pests because they already occur in the United States and therefore, according to international standards, cannot be considered to be quarantine pests or pests of concern for which mitigations are required and concluded that avocado sunblotch viroid,

Conotrachelus serpentinus, Scirtothrips aceri, Scirtothrips perseae, and Sphaceloma perseae should be removed as pests of concern for which regulatory action is required.

Upon further consideration, we agree with the commenters' assessment regarding avocado sunblotch viroid, Conotrachelus serpentinus, and Sphaceloma perseae. These are non-actionable pests that already exist in certain areas of the United States, for which no domestic program exists. We also allow domestic shipments of susceptible species to travel interstate without restriction. Given that our import regulations cannot be more stringent than our domestic regulations, we have removed the pests from the pest list and adjusted the PRA accordingly.

However, we disagree with the commenters' other points regarding, Scirtothrips aceri and Scirtothrips perseae. Scirtothrips aceri is considered actionable only for those shipments to Hawaii and/or Puerto Rico because that pest is not found in Hawaii and Puerto Rico. It is considered a non-actionable pest for shipments to the continental United States. Scirtothrips perseae was dismissed in previous PRAs developed by APHIS as a pest associated with plant parts other than avocado fruit or in rotting fruit on ground. However, the PRA developed in association with this rule² cites more recent research indicating that avocado fruit is a host.

The same commenters stated that thrips in general and Pseudophilothrips perseae in particular had already been examined by APHIS as part of a previous rulemaking and determined to be unlikely to be in the commercial import pathway because they are not generally associated with mature fruit or remain on mature, harvested fruit. The commenters concluded that regulating thrips does not seem to be supported by relevant science concerning the biology of

² To view the PRA and other supporting documents, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0088>

these pests and the realities of the commercial packing process and requested that Pseudophilothrips perseae be removed from the pest list for fresh Hass avocado fruit from Mexico.

As stated previously, recent research, which we consulted in preparing the PRA associated with this rule, indicates that fresh Hass avocado fruit is a potential host for the listed species of thrips. In addition, thrips of the families Phlaeothripidae and Thripidae have been intercepted with shipments of avocado fruit for consumption, both in commercial shipments and passenger baggage at U.S. ports of entry.

The same commenters questioned the inclusion of Cryptasasma perseana in the list of pests of concern, stating that the tests that supposedly proved the pest's association with avocado fruit on the tree were not performed outside of laboratory conditions. The commenters stated that forced infestation studies in the field, at varying altitudes and cultural conditions, should be conducted to support the conclusion that Cryptasasma perseana is a pest of concern for fresh Hass avocado fruit from Mexico. The commenters concluded that listing this pest as a quarantine pest of commercially produced fresh Hass avocado fruit is premature.

As indicated in the PRA, we determined that the likelihood of introduction for this species is negligible and that the mitigations already in place to provide phytosanitary protection against Stenoma catenifer are likely to also detect this species. However, the larvae of the two species can be easily confused and we therefore included Cryptasasma perseana in the list of pests of concern in order to avoid any need for inspectors to distinguish between those larvae, misidentification of which could then lead to entry of Stenoma catenifer into the United States. The research cited by the commenters included the conclusion that it is more likely that Cryptasasma perseana lays eggs in trees with the caveat that additional research is required.

Without specific evidence that this species does not lay eggs only in trees or on fruit on the ground, no changes will be made at this time due to the potential damage caused by an infestation.

Five commenters stated that Sphaceloma perseae is a very common cosmetic problem in Mexico as well as in other countries from which avocados are imported. The commenters observed that Sphaceloma perseae is present domestically, in both California and Florida. The commenters wanted to know why the proposed phytosanitary measures included mitigation against Sphaceloma perseae.

As stated previously, Sphaceloma perseae has been removed from the list of pests of concern since it already exists in certain areas of the United States, domestic shipments of susceptible species are permitted travel interstate without restriction, and our import regulations cannot be more stringent than our domestic regulations.

Comments on Pest Risk

Two commenters said that, as a result of the potential harm these pests represent, the importation of fruits and vegetables should be limited and tightly controlled. The commenters claimed that, due to the eventuality of human error, compliance with the required measures will not be complete and an exponential increase in the importation level of fresh Hass avocado fruit from Mexico therefore represents an exponential phytosanitary risk.

Each organism carries its own risk of following the pathway, and APHIS has been very successful in assessing and mitigating the risks associated with new market access. We have stated in the past that if zero tolerance for pest risk were the standard applied to international trade in agricultural commodities, it is quite likely that no country would ever be able to export a fresh agricultural commodity to any other country. Our pest risk analysis process will identify

and assign appropriate and effective mitigations for any identified pest risks. If, based on our PRA, we conclude that the available mitigation measures against identified pest risks are insufficient to provide an appropriate level of protection, then we will not authorize the importation of the particular commodity.

Another commenter said that the studies cited in the proposal and in the PRA did not indicate whether all Mexican States share the same pests as Michoacán. The commenter questioned the conclusion of the CIED, saying that the import requirements have only been shown to mitigate the phytosanitary risk posed by fresh Hass avocado fruit from Michoacán, Mexico, and does not take into account any unique pest situations that may exist in other Mexican States.

The avocado pests assessed by the PRA were those present in all of Mexico. Pests associated with fresh Hass avocado fruit with a likelihood of introduction of medium or greater were evaluated. We then examined existing mitigation requirements for fresh Hass avocados from Michoacán, Mexico to see if they would provide mitigation against pests from all of Mexico and found that they would provide adequate protection against the importation of the pests of concern.

The same commenter and a second commenter suggested that those Mexican States that cannot meet the import requirements may trade with Mexican States that can. As such, the commenters argued that avocados from unapproved Mexican States could potentially enter the chain of export and thereby introduce pests into the United States.

Paragraph 319.56-30(c)(2)(iv) requires that harvested Hass avocado fruit be placed in field boxes or containers of field boxes that are marked to show the official registration number of the orchard from which they were harvested. Paragraph 319.56-30(c)(3)(v) requires that the

identity of the fresh Hass avocado fruit must be maintained from field boxes or containers to the containers in which they will be shipped so the avocados can be traced back to the orchard in which they were grown if pests are found at the packinghouse or the port of first arrival in the United States. These requirements are intended to prevent inclusion of fruit from unauthorized orchards or areas in shipments intended for export to the continental United States, Hawaii, and Puerto Rico.

One commenter requested further information regarding population densities and any required mitigation measures for Conotrachelus aguacatae and Heilipus lauri from areas in Mexico not currently approved to export fresh Hass avocado fruit.

A second commenter said that APHIS should gather and evaluate current pest population information and mitigation measures being implemented for the pests of concern in other production regions in Mexico prior to importation of fresh Hass avocado fruit into the continental United States, Hawaii, and Puerto Rico from those regions.

Currently, all municipalities within Michoacán are required to be surveyed twice a year and found free of Conotrachelus aguacatae, Conotrachelus perseae, Heilipus lauri, Stenomacatanifer, which are the pests capable of inflicting the most damage if they were allowed to become established. APHIS and the Mexican NPPO have agreed that before another Mexican State is eligible to participate in the export program, at least 2 years of survey data establishing that the avocado plant pests and diseases of concern are not present in that region will be provided to APHIS. Mitigation measures for the pests of concern in the remainder of Mexico will be the same as those currently required for fresh Hass avocados from Michoacán, Mexico. Producers will have to demonstrate municipality and orchard freedom from these and other major pests of concern. Shipment of fresh Hass avocado fruit to the continental United States,

Hawaii, and Puerto Rico from any additional Mexican areas will not be approved until APHIS and the Mexican NPPO have agreed that those new areas have met the requirements of the systems approach.

Another commenter said that the required pest control measures were not specified in the proposed rule. The commenter asked if those measures will affect the quality of the fresh Hass avocado fruit or represent a threat to consumer health.

As stated in the CIED that accompanied the proposed rule, if any of the avocado pests of concern are detected during the semiannual pest surveys in a packinghouse, certified orchard or areas outside of certified orchards, or via other monitoring or inspection activity in the municipality, the Mexican NPPO must immediately initiate an investigation and take measures to isolate and eradicate the pests. The Mexican NPPO must also provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken in response. In accordance with the operational workplan, depending upon the nature of the pest detection, affected orchards may lose their export certification, and avocado exports from that orchard may be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken by the affected orchard have been effective. As for the human health implications of pesticide usage, as stated previously, the FDA samples and tests imported fruits and vegetables for pesticide residues that may be harmful to humans. Yearly monitoring reports and information on the program may be found here:

<http://www.fda.gov/Food/FoodborneIllnessContaminants/Pesticides/UCM2006797.htm>.

Comments on the Systems Approach

With the exception of a clarification of the language in § 319.56–30, paragraph (c)(3)(vii) concerning when sealed, insect-proof containers would be required to be used in shipping of the

fruit and the removal of mandatory fruit cutting at land and maritime borders found in § 319.56–30(f), we did not propose any changes to the systems approach required for the importation of fresh Hass avocado fruit from Michoacán, Mexico, which will be required for the importation of fresh Hass avocado fruit from other approved areas in Mexico. Specifically, these requirements are found in § 319.56-30(c) and include orchard certification, traceback labeling, pre-harvest orchard surveys, orchard sanitation, post-harvest safeguards, and fruit cutting and inspection at the packinghouse.

One commenter stated that discretionary fruit cutting will rely more heavily on inspector expertise to determine whether to perform samplings. The commenter wanted to know whether APHIS or CBP will provide inspectors with training to decide when it is appropriate to perform a fruit cutting on a shipment of fresh Hass avocado fruit from Mexico. If so, the commenter wanted to know how this training would differ from current inspector training.

The operational workplan requires any shipment that arrives with a broken seal to be inspected, which would include fruit cutting. Shipments may also be subject to random sampling as dictated by local CBP port procedures. We are confident that existing inspector training will continue to provide APHIS and CBP inspectors with the necessary expertise.

APHIS is removing specific pest names from the regulations and replacing them with references to the “avocado pests listed in the operational workplan.” The same commenter asked what criteria will be considered in adding pests to or removing pests from the list in the operational workplan, whether proposed changes would be subject to public review and comment, and whether the operational workplan would be available to the public for review and, if so, where it would be located.

Generally speaking, we do not list every possible quarantine pest associated with a particular commodity in the regulations, as this would require a lengthy and cumbersome rulemaking process every time the pest list changed due to factors such as a new pest discovery or emerging research involving a given pest. The regulations governing the importation of fresh Hass avocado fruit from Michoacán, Mexico, did contain the specific names of all pests of concern at the time, however that inclusion was not intended to serve as and was not an all-inclusive pest list. This is consistent with and is in line with our most recent policies to move specifics such as pest names from the regulations to the operational workplan, which provides a greater degree of flexibility in the face of any potential changes to the pest situation in any country. Changes to the list of quarantine pests in the operational workplan governing the importation of fresh Hass avocado fruit from Mexico will require a bilateral agreement between APHIS and the Mexican NPPO and will not involve publication of a Federal Register notice with regard to the updated pests. Operational workplans are and will continue to be available upon request.

Another commenter said that mandatory sampling and cutting requirements at U.S. ports of entry should be maintained for a period of 2 years following the acceptance of fresh Hass Avocado fruit from any new Mexican State or production region in order to fully assess the efficacy of the systems approach in those areas.

Since 2004, approximately 181,000 consignments totaling over 3.2 million metric tons of fresh Hass avocado fruit from Michoacán, Mexico, have been imported into the United States. None of the pests listed in the Mexican Hass avocado PRAs (1996, 2004, and 2014) as following the pathway of fresh Hass avocado fruit have ever been intercepted in any commercial consignment since Mexico was granted market access in 1997. This record demonstrates the

efficacy of the required phytosanitary measures, which are largely identical to those that will be required to be met by any Mexican States approved after publication of this rule, particularly as the pests of concern for fresh Hass avocado fruit throughout Mexico are identical.

One commenter recommended that a number of provisions specified in the 2011 operational workplan be included in the regulations. The commenter stated that it is not clear whether the conditions of the operational workplan would be required by the regulations. Finally, the commenter said that certain provisions in the 2011 operational workplan related to orchards and packinghouses should be modified.

As stated previously, APHIS no longer includes highly specific, prescriptive phytosanitary measures in the regulations, but rather we utilize broader requirements. Operational workplans establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. Paragraph 319.56-30(d) requires that all consignments of fresh Hass avocado fruit from Mexico be accompanied by a phytosanitary certificate issued by the Mexican NPPO with an additional declaration certifying that the conditions specified in the regulations have been met. The commenter's suggestions regarding amendments to the 2011 operational workplan are outside the scope of the current regulation as the contents of the operational workplan are agreed upon by APHIS and the NPPO of the exporting country.

Comments on Program Oversight

Two commenters said that APHIS is dependent on local authorities in Mexico to enforce the requirements set forth in the regulations and the operational workplan. The commenters

cited the Corruption Perceptions Index issued by Transparency International³ as proof that corruption within Mexico will most certainly occur in connection with the export of fresh Hass avocado fruit.

Like the United States, Mexico is a signatory to the SPS Agreement. As such, it has agreed to respect the phytosanitary measures the United States imposes on the importation of plants and plant products from Mexico when the United States demonstrates the need to impose these measures in order to protect plant health within the United States. The CIED that accompanied the proposed rule provided evidence of such a need. That being said, as we mentioned in the proposed rule, APHIS will monitor and audit Mexico's implementation of the systems approach for the importation of fresh Hass avocado fruit into the continental United States, Hawaii, and Puerto Rico. If we determine that the systems approach has not been fully implemented or maintained, we will take appropriate remedial action to ensure that the importation of fresh Hass avocado fruit from all of Mexico does not result in the dissemination of plant pests within the United States.

One commenter suggested that APHIS require at least 2 years of survey data establishing that the avocado plant pests and diseases of concern are not present in any potential additional exporting Mexican States or areas. The commenter also suggested that potential additional exporting States or areas demonstrate their ability to successfully adhere to the requirements set out in the regulations via exporting fresh Hass avocado fruit to countries other than the United States for a period of at least 2 years under the those requirements.

³ The Corruption Perceptions Index may be viewed here: <http://www.transparency.org/cpi2014/results>.

We will be requiring 2 years of survey data for the pests of concern from each Mexican area seeking approval to export fresh Hass avocado fruit to the continental United States, Hawaii, and Puerto Rico. The commenter's point about exports of fresh Hass avocado fruit to countries other than the United States under U.S. requirements is not feasible. Every country sets its own requirements for importation of a given commodity and exercises a level of phytosanitary protection at its borders that it deems appropriate. APHIS makes its phytosanitary decisions based on our own research, experience, and expertise.

Two commenters said that adequate oversight of the current program is only possible because the export area was confined to the State of Michoacán, and therefore easy to oversee. The commenters claimed that the entire country of Mexico will prove almost impossible to monitor for compliance with the regulations. The commenter concluded that this will be magnified by the fact that the whole of Mexico will be allowed to export fresh Hass avocado fruit upon the effective date of this final rule.

As stated in the proposed rule, the whole of Mexico will not immediately begin shipment of fresh Hass avocado fruit to the continental United States, Hawaii, and Puerto Rico. Rather, Mexican States will likely be approved piecemeal as they meet the requirements established in the regulations. Currently, only the State of Jalisco is prepared to meet the requirements set out in the regulations for eligibility to ship fresh Hass avocado fruit into the continental United States, Hawaii, and Puerto Rico. APHIS will monitor and audit Mexico's implementation of the systems approach for the importation of fresh Hass avocado fruit from all of Mexico into the continental United States, Hawaii, and Puerto Rico. If we determine that the systems approach has not been fully implemented or maintained, we will take appropriate remedial action to ensure that the importation of fresh avocado fruit from Mexico does not result in the dissemination of

plant pests within the United States. In addition, APHIS has reviewed its resources and believes it has adequate coverage across the United States to ensure compliance with its regulations, including an expansion of the Mexican avocado import program, as established by this rule. APHIS has Pre-clearance and Offshore Program staff in Mexico monitoring many export programs, including the avocado program.

Comments on the Economic Analysis

We prepared an initial regulatory flexibility analysis (IRFA) in connection with the proposed rule regarding the economic effects of the rule on small entities. We invited comments on any potential economic effects and received a number of comments.

In the initial regulatory flexibility analysis we stated that, “we do not currently have all the data necessary for a comprehensive analysis of the effects of this proposed rule.” One commenter said that, since we do not know what the precise economic impact will be, the economic risk is unnecessary. The commenter argued that we do not know if the potential influx of fresh Hass avocado fruit from all of Mexico will prove disastrous for domestic growers.

While it is true that precise, future price impacts of this rule are not known, the additional quantity of fresh Hass avocado fruit that will be imported from Mexico as a result of this rule is expected to be relatively small; price effects are therefore also likely to be small. Michoacán, Mexico, from which all fresh Hass avocado fruit imports from Mexico currently originate, produces 85 percent of Mexico’s fresh Hass avocado fruit. Jalisco, the only other Mexican State prepared to meet the phytosanitary requirements necessary to export fresh Hass avocado fruit to the United States, produces 3 percent of Mexico’s fresh Hass avocado fruit, and only a fraction of Jalisco’s avocado production volume is expected to meet the rigorous phytosanitary requirements necessary for export to the United States.

Another commenter stated that the initial regulatory flexibility analysis is based on the expected impact of a “fraction” of the 90,000 pounds of fresh Hass avocado fruit available for immediate yearly importation from the State of Jalisco under the new rule. The commenter claimed that this assumption is unrealistic given that future approved Mexican States are likely to increase that yearly amount.

Our economic analysis is near term, not long term. Even so, future effects of the rule will be limited since, as stated previously, only 15 percent of Mexico’s fresh Hass avocado fruit is grown outside of the State of Michoacán (3 percent in Jalisco). Only a fraction of that 15 percent (3 percent in Jalisco) is expected to satisfy U.S. phytosanitary import requirements.

The same commenter observed that the analysis assumes that the exponential increase for the demand of avocados in the United States seen over the last decade will continue indefinitely. The commenter found that assumption unlikely and noted that there are indicators that the rate of increased demand for avocados in the United States has begun, and will continue, to level off.

Although future growth in the U.S. demand for avocado may not match that experienced during the past decade, the factors that contributed to the recent history of expanded consumption—a growing U.S. population generally and a growing Hispanic share of the population, greater awareness of the avocado’s health benefits, restaurants incorporating avocados into their menu offerings, a year-round supply of affordable, fresh Hass avocado fruit, and increased disposable income remain the same. We are unaware of any indications that the consumer market for fresh Hass avocado fruit has plateaued and the commenter did not provide a reference for that statement.

Several commenters said that, as pointed out in the IFRA, most of the 7,495 U.S. avocado growers are small entities and that these domestic growers produce roughly 230,000 metric tons

of fresh Hass avocado fruit each year at a cost of \$1.09 per pound, whereas the United States imports 462,000 metric tons each year from the Mexican State of Michoacán at a cost of \$0.87 per pound. The commenters stated that a slowing in the increase of U.S. demand for avocados or an increase in the availability of cheaper imports would reduce the ability of domestic growers to compete in the avocado market, and both occurring at the same time would devastate domestic growers. The commenters concluded that this devastation would be experienced most acutely by small entities, which are generally less able to cut costs than larger growers and asked why we did not consider such losses as a significant economic impact on small entities.

As stated previously, the scale of additional imports makes it highly unlikely that any entities, large or small, will suffer significant economic hardship.

Two commenters observed that, according to the USDA Economic Research Service, imports accounted for 71.1 percent of the domestic fresh avocado consumed in the United States during 2011, down from 72.4 percent the previous year. The commenters argued that producers in California, Florida, Hawaii, and Puerto Rico could benefit via increased production if those import levels were curtailed, given that California, Florida, Hawaii, and Puerto Rico are areas where year-round avocado production may occur.

APHIS' primary responsibility with regard to international import trade is to identify and manage the phytosanitary risks associated with importing commodities. When we determine that the risk associated with the importation of a commodity can be successfully mitigated, it is our responsibility under the trade agreements to which we are signatory to make provisions for the importation of that commodity.

Comments on General Economic Effects

While specific comments on the initial regulatory flexibility analysis are addressed above and in the final regulatory flexibility analysis, we received a number of comments concerning the overall economic effect of the rule as it relates to U.S. trade policies concerning Mexico.

Three commenters argued that allowing for the importation of fresh Hass avocado fruit from Mexico would lead to American job loss. The commenters said that inexpensive imports will drive down prices, decreasing profits for domestic producers, and thereby triggering layoffs. The commenters stated that domestic avocado production is already subject to such limiting factors as high labor costs and droughts and that allowing for importation of fresh Hass avocado fruit from all of Mexico will decrease domestic profits.

Another commenter asked how prices for fresh Hass avocados could be regulated in order to allow domestic producers to fairly compete and thrive given the high volume of Mexican production.

Such actions would be beyond the scope of APHIS' statutory authority under the Plant Protection Act, whereby APHIS may prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary in order to prevent the introduction or dissemination of a plant pest or noxious weed within the United States. Additionally, as a signatory to the SPS Agreement, the United States has agreed that any prohibitions it places on the importation of fruits and vegetables will be based on scientific evidence related to phytosanitary measures and issues, and will not be maintained without sufficient scientific evidence. The price regulation requested by the second commenter would not be in keeping with this agreement.

We are making two miscellaneous changes to the regulations not mentioned in the proposed rule. Currently, paragraph (c)(2)(iv) requires that harvested fresh Hass avocado fruit be moved from the orchard to the packinghouse within 3 hours of harvest or they must be protected from fruit fly infestation until moved. Given that some production areas are more than 3 hours away from the nearest approved packinghouse, we are altering the language to state that the fresh Hass avocado fruit must be moved to the packinghouse the same day as they are harvested. Given that there have been no interceptions of fruit flies in connection with the current fresh Hass avocado export program and the current PRA states that uninjured, commercially produced fresh Hass avocado fruit do not serve as hosts for fruit flies, we are confident that this change will not impact the phytosanitary efficacy of the program.

We also specify in the regulations that pest surveys must be performed at least semiannually. References to this requirement are found in §§ 319.56-30(c)(1)(ii), 319.56-30(c)(2)(i), and 319.56-30(e). We are amending this requirement slightly to specify that semiannual surveys must be conducted for at least 5 years. Thereafter, only one survey per year will be required provided no pests of concern are discovered during the 5 years of semiannual surveys. We are adding a time limit for the semiannual survey requirement based on the lack of pest discovery and interceptions associated with the importation of fresh Hass avocado fruit from Michoacán, Mexico.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under FOR FURTHER INFORMATION CONTACT.

Mexican officials have requested that additional States in Mexico be allowed to export fresh Hass avocado fruit to the United States under the same systems approach that currently applies to fresh Hass avocado fruit from approved municipalities in Michoacán. Imports of fresh Hass avocado fruit from Mexico into the United States have increased significantly over the years, from 311 million pounds in 2003 to over 1.1 billion pounds in 2013. A growing U.S. population and growing Hispanic share of the population, greater awareness of the avocado's health benefits, year-round availability of affordable fresh Hass avocado fruit, and greater disposable income have contributed to the increased demand.

The dramatic increase in demand over the past decade has enabled domestic producers to maintain production levels despite the large increase in fresh Hass avocado fruit imports. Annual U.S. avocado production, 2002/03 to 2011/12, averaged 423 million pounds, of which California accounted for 87.5 percent or over 375 million pounds. Nearly all of California's production is of the Hass variety.

Potential economic effects of this rule are estimated using a partial equilibrium model of the U.S. fresh Hass avocado fruit sector. There are 2,653 hectares in Jalisco that are registered in Mexico's SRRC (Contamination Risk Reduction System) as qualified to export fresh Hass avocado fruit to the United States. Avocados are expected to be shipped from one-half of these orchards (1,326.5 hectares) in the first year that this rule is implemented. Assuming an average

yield of 10 metric tons (MT) per hectare, we expect fresh Hass avocado fruit imports from Jalisco to total approximately 13,265 MT (29 million pounds) in the first year, and between 13,265 and 26,530 MT (29 to 58 million pounds) in subsequent years.

If the United States were to import between 13,265 and 26,530 MT of fresh Hass avocado fruit from Jalisco and there were no displacement of avocado imports from other sources, the decline in avocado prices may range from 1.7 percent to 3 percent. Consumer welfare gains of about \$24 million to \$45 million would outweigh producer welfare losses of about \$6 million to \$11 million, resulting in net welfare gains of about \$18 million to \$34 million.

More reasonably, partial import displacement would occur, and price and welfare effects would be proportional to the net increase in U.S. fresh Hass avocado imports. If 20 percent of the 13,625 to 26,530 MT of fresh Hass avocado fruit imported from Jalisco were to displace avocado imports from elsewhere (e.g., Chile), including the State of Michoacán in Mexico, then the price decline would be about 1.3 to 2.5 percent; consumer welfare gains of \$19 million to \$36 million and producer welfare losses of \$5 million to \$9 million yield net welfare benefits of \$14 million to \$27 million.

While APHIS does not have information on the size distribution of U.S. avocado producers, according to the Census of Agriculture, there were a total of 93,020 Fruit and Tree Nut farms in the United States in 2012. The average value of agricultural products sold by these farms was less than \$274,000, which is well below the Small Business Administration's small-entity standard of \$750,000. It is reasonable to assume that most avocado farms qualify as small entities. Between 2002 and 2012, the number of avocado operations in California grew by approximately 17 percent, from 4,801 to 5,602 operations.

Executive Order 12988

This final rule allows fresh Hass avocado fruit to be imported into the United States from all of Mexico. State and local laws and regulations regarding fresh Hass avocado fruit imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56-30 is amended as follows:

- a. By revising the section heading.

b. In the introductory text, by removing the words “Michoacan, Mexico,” and adding the word “Mexico” in their place.

c. By revising paragraph (c), introductory text.

d. In paragraph (c)(1)(i), by removing the words “bilateral work plan” and adding the words “operational workplan” in their place.

e. By revising paragraph (c)(1)(ii).

f. In paragraph (c)(2), introductory text, by removing the words “annual work plan” and adding the words “operational workplan” in their place.

g. By revising paragraph (c)(2)(i).

h. In paragraph (c)(2)(iv), by removing the words “within 3 hours” and adding the words “the day” in their place.

i. In paragraph (c)(3), introductory text, by removing the words “annual work plan” and adding the words “operational workplan” in their place.

j. By revising paragraph (c)(3)(vii).

k. In paragraph (c)(3)(viii), by adding two sentences at the end of the paragraph.

l. By revising paragraph (e).

m. In paragraph (f), by removing the word “will” and adding the word “may” in its place.

The revisions and additions read as follows:

§ 319.56-30 Hass avocados from Mexico.

* * * * *

(c) Safeguards in Mexico. The avocados must have been grown in an orchard located in a municipality that meets the requirements of paragraph (c)(1) of this section. The orchard in which the avocados are grown must meet the requirements of paragraph (c)(2) of this section.

The avocados must be packed for export to the United States in a packinghouse that meets the requirements of paragraph (c)(3) of this section. The Mexican national plant protection organization (NPPO) must provide an annual operational workplan to APHIS that details the activities that the Mexican NPPO will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. APHIS will be directly involved with the Mexican NPPO in the monitoring and supervision of those activities. The personnel conducting the trapping and pest surveys must be hired, trained, and supervised by the Mexican NPPO or by the State delegate of the Mexican NPPO.

(1) * * *

(ii) The municipality must be surveyed at least semiannually (once during the wet season and once during the dry season) for a period of at least 5 years and found to be free from the avocado pests listed in the operational workplan. Thereafter, the municipality must be surveyed at least once per year provided the municipality remains pest free.

(2) * * *

(i) The orchard and all contiguous orchards and properties must be surveyed semiannually for a period of at least 5 years and found to be free from the avocado pests listed in the operational workplan. Thereafter, the orchard and all contiguous orchards and properties must be surveyed at least once per year provided the orchard and all contiguous orchards and properties remain pest free.

* * * * *

(3) * * *

(vii) The avocados must be packed in clean, new boxes or bulk shipping bins, or in clean plastic reusable crates. The boxes, bins, or crates must be clearly marked with the identity of the grower, packinghouse, and exporter.

(viii) * * * If, at the port of export for consignments shipped by air or sea, the packed avocados are transferred into a non-refrigerated container, the boxes, bins, or crates must be covered with a lid, insect-proof mesh, or other material to protect the avocados from fruit-fly infestation prior to leaving the packinghouse. Those safeguards must be intact at the time the consignment arrives in the United States.

* * * * *

(e) Pest detection. If any of the avocado pests listed in the operational workplan are detected during the pest surveys in a packinghouse, certified orchard or areas outside of certified orchards, or other monitoring or inspection activity in the municipality, the Mexican NPPO must immediately initiate an investigation and take measures to isolate and eradicate the pests. The Mexican NPPO must also provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. In accordance with the operational workplan, depending upon the nature of the pest detection, affected orchards may lose their export certification, and avocado exports from that orchard may be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective.

* * * * *

Done in Washington, DC, this 23rd day of May 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.
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